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UNITED STATES FIRE INSURANCE COMPANY  
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10 IN THE UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 (OAKLAND DIVISION)  
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14 LENSRAFTERS, INC.; and EYEXAM  
OF CALIFORNIA, INC.;

15 Plaintiffs,  
16

17 vs.

18 LIBERTY MUTUAL FIRE INSURANCE  
COMPANY; EXECUTIVE RISK  
19 SPECIALTY INSURANCE COMPANY;  
UNITED STATES FIRE INSURANCE  
20 COMPANY; MARKEL AMERICAN  
INSURANCE COMPANY; and  
21 WESTCHESTER FIRE INSURANCE  
COMPANY,

22 Defendants.  
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Case No. C-07-2853 SBA  
The Honorable Sandra B. Armstrong

**E-FILING**

**NOTICE OF MOTION AND MOTION BY  
UNITED STATES FIRE INSURANCE  
COMPANY TO DISMISS OR, IN THE  
ALTERNATIVE, STAY CROSS-CLAIMS IN  
FAVOR OF PRIOR-PENDING NEW YORK  
STATE COURT ACTION**

Date: September 18, 2007  
Time: 1:00 p.m.  
Courtroom: 3

1 ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that, pursuant to its stipulation with MARKEL AMERICAN  
3 INSURANCE COMPANY ("Markel") and WESTCHESTER FIRE INSURANCE COMPANY  
4 ("Westchester") and in satisfaction of its obligation to respond to their newly-filed cross-claims,  
5 UNITED STATES FIRE INSURANCE COMPANY ("U.S. Fire") files this notice of motion and  
6 motion to dismiss, or in the alternative stay, the cross-claims of Markel and Westchester. On  
7 September 18, 2007 at 1:00 p.m., or as soon thereafter as counsel can be heard in the above-  
8 entitled Court located at 1301 Clay Street, Courtroom 3, Oakland, California, defendant U.S. Fire  
9 will and hereby does move to dismiss, or in the alternative stay, the cross-claims as part of its  
10 motion to stay or dismiss this entire action in favor of the prior-filed action -- proceeding on the  
11 same issues of contract interpretation and involving the same parties -- currently pending in New  
12 York State Court. This motion is based upon this Notice of Motion and Motion, as well as upon  
13 the Memorandum of Points and Authorities, the Request for Judicial Notice, the declaration of  
14 Amy E. Rose and the exhibits thereto filed and served on July 18, 2007 and such other evidence  
15 or oral argument as may be presented to the Court at the hearing on this motion.

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17 Dated: August 7, 2007

SQUIRE, SANDERS & DEMPSEY L.L.P.

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19 By: /s/ Amy E. Rose

Amy E. Rose

20 Attorneys for Defendant  
21 UNITED STATES FIRE INSURANCE  
22 COMPANY  
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**PROOF OF SERVICE**

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is One Maritime Plaza, Third Floor, San Francisco, California 94111-3492.

On August 7, 2007, I served the following document described as:

**NOTICE OF MOTION AND MOTION BY UNITED STATES FIRE INSURANCE COMPANY TO DISMISS OR, IN THE ALTERNATIVE, STAY CROSS-CLAIMS IN FAVOR OF PRIOR-PENDING NEW YORK STATE COURT ACTION**

☒ VIA THE UNITED STATES DISTRICT COURT ELECTRONIC FILING SERVICE on interested parties in this action as set forth below:

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Executed on August 7, 2007, at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Amy E. Rose  
Amy E. Rose